APPEARANCES

BOARD MEMBERS
Mr. John A. Pérez, Chairperson
Mr. Stephen Kaufman, Vice Chairperson (via teleconference)
Mr. Michael Bustamante (via teleconference)
Mr. Tal Finney
Mr. Carl Guardino (via teleconference)

STAFF
Mr. Michael Kanotz, Staff Counsel
Ms. Jana Lean
Ms. Katherine Montgomery

ALSO PRESENT
Mr. George Allen, Amador County
Ms. Joan Bechtel, Sutter County
Ms. Terry Hansen, Yuba County
Mr. Vernon McDonald, Tulare County
Ms. Sheree Noell, Sequoia Voting Systems
Ms. Hiley Wallis, Tulare County

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
CHAIRPERSON PÉREZ: Good afternoon. Thank you for joining us. I'd like to call to order the meeting of the Voting Modernization Board for Wednesday, January 18th, 2006.

The first item before us is a declaration of quorum. I heard amazingly -- let's call the roll.

MS. MONTGOMERY: All right. John Pérez.

CHAIRPERSON PÉREZ: Here.

MS. MONTGOMERY: Stephen Kaufman.

VICE CHAIRPERSON KAUFMAN: Here.

MS. MONTGOMERY: Michael Bustamante.

BOARD MEMBER BUSTAMANTE: Here.

MS. MONTGOMERY: Tal Finney.

BOARD MEMBER FINNEY: Here.

MS. MONTGOMERY: Carl Guardino.

BOARD MEMBER GUARDINO: Here.

CHAIRPERSON PÉREZ: Okay. We have -- we have a hundred-percent attendance.

And Mr. Finney is playing with your microphone, gentlemen, so -- there we go.

Okay. Since the three of you are all on the line by phone, if you would -- as is my usual habit, I'll call upon you individually, but if you want to insert something in when you're not called upon, if you'd just...
identify yourself by name again, just so the reporter can capture that.

The next item before us is item 3, public comment for items that are not specifically on our agenda. Do we have any cards for item 3?

MS. LEAN: No, sir.

CHAIRPERSON PÉREZ: Okay. Item 4, adoption of the November 16 and December 5th, 2006 minutes, an action item. At our last meeting we didn't have enough time to review the November action item and minutes, and we deferred it to today. So has everybody had a chance to review both the November and December?

And do I see -- hear a motion from Mr. Finney?

BOARD MEMBER FINNEY: Sure. I'll move to adopt the minutes.

BOARD MEMBER BUSTAMANTE: I'll second that. It's Michael.

CHAIRPERSON PÉREZ: Michael Bustamante seconds.

Any discussion?

Hearing none, all in favor, signify by saying "aye."

MULTIPLE SPEAKERS: Aye.

CHAIRPERSON PÉREZ: And aye. We've got a unanimous consent there.

Next before us is item 5, project documentation
package review and funding award approval. The first of four Counties to come before us is Amador County. And Jana, if you would walk us through Amador County, please.

MS. LEAN: Amador County submitted a project documentation plan. The staff recommends funding of a full allocation of $335,363.98. They are purchasing the ES&S Model 100 precinct ballot counters, 40 units, and the ES&S AutoMARK voter assisted terminals for --

VICE CHAIRPERSON KAUFMAN: Actually, if we could get a little more volume on --

MS. LEAN: Okay. Stephen, can you hear me a little better now?

VICE CHAIRPERSON KAUFMAN: Barely.

CHAIRPERSON PÉREZ: Why don't we do this, Jana, let's get you to come up here and sit with us, if you would.

MS. LEAN: Okay. Can you hear me now?

VICE CHAIRPERSON KAUFMAN: Yes.

BOARD MEMBER BUSTAMANTE: Oh, yeah.

MS. LEAN: Okay. Good.

Okay. The Amador County project documentation package, I'll start again. Staff is recommending their full allocation of 335,363.98. They are purchasing the ES&S Model 100 precinct ballot counters, 40 units, and the ES&S AutoMARK voter assisted terminals, 40 units.
Also listed on your staff report, they are purchasing five iVotronic terminals, DREs, which are not certified at this time, and I will go into that at greater length in the report later on.

Amador County anticipates receiving their new voting equipment between mid December of 2005 through April of 2006, and the County plans to begin using this equipment for the June 6th, 2006 primary.

The voter verified paper audit trail requirement does not apply to this voting system as the system is a paper-based optical scan voting system.

Amador County's project documentation plan meets the requirements for completeness; however, I wanted to identify that the five iVotronic terminals, DREs, listed in the vendor contract are not currently certified for use in California. Amador County did not indicate in their project documentation plan that they planned to implement and use the iVotronic units as part of their voting system upgrade.

I just wanted to point out that Elections Code section 19201(b) prohibits any County from purchasing or contracting for a voting system, in whole or in part, unless it has received the approval for its use from the Secretary of State. As such, iVotronic terminals would not be allowed for reimbursement under Proposition 41 and
should not be approved as part of Amador County's project
documentation plan.

The ES&S Model 100 optical scan units and the
ES&S AutoMARK voter assisted terminals are certified for
use in California. And as I said earlier, they do plan
to implement the Model 100s and the AutoMARKs for the
June 6, 2006 primary.

Amador County is conducting an extensive outreach
program to introduce the new voting system to Amador
voters. The County plans to hold demonstrations at
elderly centers, community events and meetings, provide
demonstrations to individuals, and involve the local
media to promote their new voting system. And the County
also is considering offering early voting using the
Model 100s and the AutoMARKs at elderly centers and in
their office.

Amador County believes that the deployment of the
Model 100 optical scan units combined with the AutoMARK
voter assisted terminals will bring the County into
compliance with the Help America Vote Act, HAVA, and
state accessibility requirements.

Amador County will only receive VMB payments once
they have submitted detailed invoices for their certified
voting equipment. Please note that the staff proposed
funding award is based upon allowable reimbursement under
Prop 41 for voting system equipment hardware and software only. The election support services, installation, and performance bond line items listed in Amador County's contract with ES&S would not be covered as reimbursable claims under Proposition 41.

It is staff's recommendation that Amador County's project documentation plan be approved and a final award letter be issued in the amount of $335,363.98 to purchase the 40 ES&S Model 100 precinct ballot counters and the 40 ES&S AutoMARK voter assisted terminals and associated software.

Any questions?

CHAIRPERSON PÉREZ: Mr. Kaufman, any questions from you?

VICE CHAIRPERSON KAUFMAN: Looks like we're kind of going down a little different path here than we had done before, and I guess I'm just trying to understand the certification status. I guess I just want a little more clarification on the DRE units and the certification issue. Because I guess unlike these other ones that we're going to see where the -- there's conditional certification on the software, these DREs specifically are not certified for use; correct?

MS. LEAN: That is correct.

VICE CHAIRPERSON KAUFMAN: And so unless someone
is applying -- unless -- is there an application pending
for this particular system?

    MS. LEAN: According to the information that I
have from our voting system -- the new voting system
office, they do plan to submit an application for
certification for the iVotronic units.

    BOARD MEMBER FINNEY: That's separate than what's
going on right now.

    CHAIRPERSON PÉREZ: Right. It's separate than
what's going on right now. The staff recommendation
specifically carved out those DREs, and so none of the
recommendation amount would cover any portion of the
purchase of the five DREs.

    BOARD MEMBER BUSTAMANTE: Right. So there's no
reimbursement of those at all; right?

    MS. LEAN: Correct.

    BOARD MEMBER BUSTAMANTE: Okay.

    CHAIRPERSON PÉREZ: Thank you, Mr. Bustamante.

    Mr. Guardino?

    BOARD MEMBER GUARDINO: No, I'm fine.

    CHAIRPERSON PÉREZ: Mr. Finney?

    BOARD MEMBER FINNEY: I'd actually -- do we have
anybody here from Amador County?

    CHAIRPERSON PÉREZ: If you'd come forward and...

    MR. ALLEN: My name is George Allen. I'm the
deputy registrar of voters.

CHAIRPERSON PÉREZ: Thank you for joining us today.

Obviously, the staff recommendation is for awarding the full amount that we had previously allocated to the County to cover the precinct ballot counters and the AutoMARK terminals. We do have a little bit of an interest, a curiosity, even though there's not VMB money associated with the five DREs, and I was wondering whether you might be able to help us understand how you were planning to incorporate those five DREs with the rest of the system that you've outlined here.

MR. ALLEN: Let me back up a little bit. Where we acquired the DREs is when we formed a committee to help us evaluate voting systems. And part of the committee was disabled individuals and a couple members were from the grand jury, one of whom knew a little bit about computers. And he felt that in order for us to keep in touch with the system and what was going on and everything, that we should at least purchase the DREs, so that's where the idea came from.

We would obviously not be able to buy them until they're certified by the State. I believe we can't even take delivery of them until they're certified by the State.
What we liked about them is they're a little bit different than the AutoMARK. You know, it's a little bit different concept, and it's something we felt, number one, we should be used to, and number two, it would assist us in our early voting. So that's...

CHAIRPERSON PÉREZ: Okay. Thank you.

I'm just going to run down the line to see if anybody has any questions.

Mr. Kaufman?

VICE CHAIRPERSON KAUFMAN: No.

CHAIRPERSON PÉREZ: Mr. Bustamante?

BOARD MEMBER BUSTAMANTE: Just one. Do they plan on coming back to us for a reimbursement of those DREs?

CHAIRPERSON PÉREZ: Well, actually, they would have -- they would have maximized the first round allocation, so they couldn't come back to us if, in fact, they fully expend the amount of money that we allocate today.

BOARD MEMBER BUSTAMANTE: Got it.

CHAIRPERSON PÉREZ: Mr. Guardino?

BOARD MEMBER GUARDINO: I don't have any questions, but once again, I don't know if my colleagues are having a hard time hearing, but it's really difficult to hear the speakers.

CHAIRPERSON PÉREZ: Okay.
Mr. Finney?

BOARD MEMBER FINNEY: No questions.

CHAIRPERSON PÉREZ: Okay. Is there a motion?

BOARD MEMBER FINNEY: I'll move approval.

VICE CHAIRPERSON KAUFMAN: And I'll second.

CHAIRPERSON PÉREZ: Mr. Finney moves, Mr. Kaufman

seconds, approval of the staff recommendation and issuing

a funding award letter in the amount of $335,363.98.

On the question --

BOARD MEMBER FINNEY: Technically it's 99 cents,

Mr. Chair.

CHAIRPERSON PÉREZ: Ninety-nine cents?

BOARD MEMBER FINNEY: Right. We're not going to

rip them off that extra penny.

MR. ALLEN: We appreciate that.

CHAIRPERSON PÉREZ: Mr. Finney, I appreciate

that. I guess your years of service in the Controller's

Office --

BOARD MEMBER FINNEY: Absolutely.

CHAIRPERSON PÉREZ: -- have finally proven

useful. Every penny counts.

On the question, if you'd call the roll, please.

MS. MONTGOMERY: John Pérez?

CHAIRPERSON PEREZ: Aye.

MS. MONTGOMERY: Stephen Kaufman?
VICE CHAIRPERSON KAUFMAN: Aye.

MS. MONTGOMERY: Michael Bustamante?

BOARD MEMBER BUSTAMANTE: Aye.

CHAIRPERSON PÉREZ: Tal Finney?

BOARD MEMBER FINNEY: Aye.

MS. MONTGOMERY: Carl Guardino?

BOARD MEMBER GUARDINO: Aye.

CHAIRPERSON PÉREZ: Very good, thank you.

MR. ALLEN: Thank you.

CHAIRPERSON PÉREZ: The next item before us is Sutter County, a slightly different situation.

And Jana, if you'd walk us through Sutter County.

MS. LEAN: Sutter County -- Sutter County has submitted a project documentation, and the staff is recommending the funding approval of their full allocation of $497,078.20. They are purchasing the Sequoia voting system AVC Edge II DREs, 225 units, and the VeriVote DRE printers, 295 units. For their absentee system, they're purchasing the Optech 400-C ballot counters, one unit, and the Optech Insight precinct ballot counters, two units.

Sutter County's plan estimates delivery of their voting system in April of 2006. The actual delivery terms of their vendor contract are more ambiguous. The contract language states that the delivery and setup date
is estimated to be completed within four months from the date of the contract.

The County plans to begin using this equipment in the June 6, 2006 primary election.

The voter verified paper audit trail is fulfilled by this new voting system as the VeriVote printer is a VVPAT component.

Sutter County's project documentation plan meets the minimum requirements for completeness, and the staff also recommends requesting that an additional acquisition schedule and project time line be provided once the County and the vendors have established actual delivery dates.

I do want to let the Board members know that in their packets today I've provided a schedule that Sutter County has submitted to the members. I will e-mail it to the other members. Sorry about that. I anticipated more attendance here.

The Sequoia AVC Edge II DRE, the VeriVote printers, the Optech Insight units, and the Optech 400-C units are certified for use in California. The software used to run the AVC Edge units currently has a conditional certification for its use as the software cannot be used in a primary election. This condition is expected to be resolved prior to the June 6th, 2006
primary. However, no application has yet been received by the Secretary of State's Office for the condition of the updated system, and unless such an application is brought forward by the vendor before the end of January, it appears unlikely that the Sequoia AVC Edge DRE units with the VeriVote printer would be able to be used during the June 6, 2006 primary.

Sutter County will be converting from the Mark-A-Vote optical scan voting system. Sutter County will use the Optech 400-C optical scan as their absentee and plans to use Optech Insight optical scan machines as backup to the 400-C. The County will be implementing the AVC Edge DRE units as their precinct-based system in all of their polling locations during the June 6, 2006 primary.

Sutter County believes that the deployment of the DRE units in all of the polling places will bring the County into full compliance with the requirements of the Help America Vote Act as the DRE provides access to those voters with disabilities and it also satisfies second-chance voting requirements by not allowing overvotes and identifying undervotes to each voter.

The County is aware that the change to the new voting system will require an outreach, voter outreach and education program and will necessitate significant
changes in staff and poll worker training. Sutter County plans to contract with an outside consultant to assist in the development and implementation of the project plan to fully implement the new system.

Sutter County will only receive VMB payments once they have submitted invoices for the purchase of the voting system.

Please note that the staff-proposed funding award is based upon allowable reimbursement under Proposition 41 for voting equipment hardware and software only. The installation, training, and outreach costs listed in Sutter County's plan would not be covered as a reimbursable claim under Proposition 41.

And as I stated earlier, the staff is recommending requesting additional acquisition schedule and project time line. If the Board chooses to accept what they have submitted -- I'm sorry the three of you do not have that in front of you, but I'll let the other two members discuss that. If they decide that that's fine, then this condition can be taken off. But we do request that once the County and the vendors have established the actual deadline dates, that they submit that as part of their package.

It is our recommendation at that the staff -- sorry, that Sutter County's project documentation plan be
approved and a funding award letter be issued in the amount of $497,078.20.

Any questions?

CHAIRPERSON PÉREZ: Let me just interject here.

I anticipate that some of you on the call, as I do, have questions about the status of Sequoia's AVC Edge II, because I think this has now come before us in probably each of the last six meetings. And it's been kind of a rolling deadline. So what I want to do is divide this item up for a second.

Do people have questions on anything unrelated to the certification question in Jana's report first? If we can deal with those issues, then we can get to the question of the status of the Edge.

So any other kinds of questions, Mr. Kaufman?

VICE CHAIRPERSON KAUFMAN: No. And I'm assuming that the -- I'm assuming that the delivery date issues on this all kind of relate to the same issue.

CHAIRPERSON PÉREZ: Yeah.

Mr. Bustamante?

BOARD MEMBER BUSTAMANTE: No.

CHAIRPERSON PÉREZ: Mr. Guardino?

BOARD MEMBER GUARDINO: No.

CHAIRPERSON PÉREZ: Mr. Finney?

BOARD MEMBER FINNEY: I was just going to point
out that the Sutter implementation plan provided to us by the staff -- which you guys will probably get via, what, mail or e-mail or something -- is actually pretty thorough. It lays out very specifically over the course of the next six months how they are going to proceed with implementation.

CHAIRPERSON PÉREZ: It's very thorough, and it's also very tight.

BOARD MEMBER FINNEY: Yes.

CHAIRPERSON PÉREZ: What I want to do because we have some logistical problems here, if you speak at the podium, our three Board members who are on the phone can't hear you, so if I could have you come forward up to the main table here and identify yourself. And then we'll kind of play a little bit of musical chairs.


While I'm not here to speak on behalf of certification, I did want to point out that I received a copy of an e-mail last night where Sequoia did submit for certification to Mr. McDannold.

CHAIRPERSON PÉREZ: Okay. Very good. Let's have you just standby, and I want to ask a representative of Sutter to come forward.

All the way up here, because we're having some
technical issues.

   Michael, can you actually get us another chair

   maybe so --

   BOARD MEMBER FINNEY:  And then we're going to
take a picture at some point when everybody is up here.

   CHAIRPERSON PÉREZ:  Right.

   (Laughter.)

   CHAIRPERSON PÉREZ:  And if you'd just kind of
speak generally in the direction of this as well.

   MS. BECHTEL:  Oh, next to that one.

   CHAIRPERSON PÉREZ:  That way they can pick you up
on the phone.

   MS. BECHTEL:  Okay.

   CHAIRPERSON PÉREZ:  Okay. If you would identify
yourself for the court reporter.

   MS. BECHTEL:  I'm Joan Bechtel, Sutter County
clerk of court and registrar of voters.

   BOARD MEMBER BUSTAMANTE:  And I can hear her
perfectly. Thank you, Mr. Chairman.

   CHAIRPERSON PÉREZ:  No problem. Thank you.

   We have -- and I don't mean to presuppose
everybody's line of questioning, but I think that over
the last several meetings we've expressed a real concern
about this conditionally-certified system, especially
since the condition is about its first application, which
is the primary election in June of 2006. And as I look through your -- the staff report with respect to this, you were first intending to use this new system in the June 2006 primary. And my concern is whether -- what you'll do if that -- if that condition doesn't get replaced, first of all, and then, second of all, where you think you are with respect to that condition.

MS. BECHTEL: That's a serious concern of ours. And what we thought we would do is probably implement the -- what we were going to use as the absentee ballot system, the optical system, and we would go ahead and implement that for the June primary election, which is our fallback position. This is not what we want to do. And then hopefully that would give time for the certification so that we would have been -- have implemented that first step as implementing the optical scan system, and then we would implement the DREs in the November election.

That's the only option we -- actually at this moment we see open to us if there should not be certification. And I just have to express to you my frustration in that when we went out and made our selection, Sequoia was listed as certified with a condition, which I represented to my members of my County, members of my board of supervisors. And then all
of a sudden -- it seems to me all of a sudden -- I'm seeing it's not just a condition, but that the Sequoia system has not been certified. And even in this report it says that the system is certified. Obviously we're not going to be able to implement a system that is not certified, but at this point we have serious concerns because of our time deadlines, and we see as the option open to us -- it will not make us HAVA compliant, but we could at least show that we are taking steps to implement a system and to become HAVA compliant.

The Mark-A-Vote system that I'm currently on is not going to -- is not making any new developments to meet HAVA requirements, so I'm going to have to go to another system. As a matter of fact, I can't even buy new voter readers, card readers, for the election. I bought two used ones, actually, from Riverside County. And in the last election I had -- I have four of them now -- two did not work, and I was down to two. So I have to go to another system, and this seems like the most logical step for me to do --

CHAIRPERSON PÉREZ: Okay.

MS. BECHTEL: -- at this point.

CHAIRPERSON PÉREZ: So your fallback position is if the certification doesn't have its condition removed for the June primary, that you'd go to -- to basically
the optical scan system --

MS. BECHTEL: We'd implement the optical scan system.

CHAIRPERSON PÉREZ: -- at the polling location in addition to it at the -- the absentee system.

MS. BECHTEL: And using the absentee system.

CHAIRPERSON PÉREZ: What I want to do is now go across each of the Board members that are on by phone and ask them if they have any questions.

So Mr. Kaufman?

VICE CHAIRPERSON KAUFMAN: I don't have any additional questions.

CHAIRPERSON PÉREZ: Mr. Bustamante? And when I say questions, I use "questions" in the way that we traditionally use them here. Comments are fine, too.

VICE CHAIRPERSON KAUFMAN: Statements.

BOARD MEMBER BUSTAMANTE: No, I don't have anything else.

CHAIRPERSON PÉREZ: Mr. Guardino?

BOARD MEMBER GUARDINO: No, not at this time.

CHAIRPERSON PÉREZ: Mr. Finney?

BOARD MEMBER FINNEY: No questions at this time.

CHAIRPERSON PÉREZ: Okay. I've got a couple of questions for Sequoia. If you would, just stay with us up here just in case we ask you to come back.
This is a divided process. We're not the board that grants certification. We're the board that has to review the information and approve funding based on what is or what is not certified. And we have serious limitations put on us as they're structured in Proposition 41.

But quite frankly, I for one, am incredibly frustrated that we have been here for at least six meetings, in many cases funding this system, having Counties go forward basically allocating our limited resources with an expectation that this issue would have been resolved, and we kept on having rolling deadlines of when to anticipate -- when to anticipate you folks applying for and the State being able to review your new product to see if it meets the California primary requirements.

What can you say to us to give us any confidence that we're actually going to be able to resolve this in a way that will allow for this system for the three Counties that are before us today to be able to be used in the June primary? Because quite frankly, if it can't be used in the June primary, then I see no urgency whatsoever for us to fund these or to allocate money today.

MS. NOELL: Okay. First let me say that I'm a
salesperson. I'm not responsible for the certification process. While I empathize with your situation with the certification process, I also experience that same situation.

Sequoia has successfully implemented primaries in California before. The -- the change is the way the Secretary now requires the reports to read. So the only change that we are making is for the decline to state report. So Sequoia can successfully implement a primary, just as we have done in the past. The only change to the certification is the way we report the decline to state.

CHAIRPERSON PÉREZ: Michael, is that a requirement of law, or is that a regulation, or is that just a change in interpretation by the Secretary?

MR. KANOTZ: You know, I don't have the technical expertise to really go into that, but what I can speak to is that although this system is certified, it's not certified -- it's certified with the condition that it cannot be used in a primary. So in its current form, it could not be used in the June primary. It could, for example, be used in the November general election. But really until the system is certified -- is recertified for use in a primary election, it couldn't be used in June.

CHAIRPERSON PÉREZ: Were those of you on the
phone able to get the main points of his response?

Basically that the system is certified but it can't --
it's not certified to be used in the June primary. It is
certified to be used in a November general election.

BOARD MEMBER FINNEY: Technically the hardware is
certified. The software in not certified in the June
primary.

CHAIRPERSON PÉREZ: Correct.

You were going to add?

MS. NOELL: I was going to that, again, we did
submit -- I saw an e-mail last night from a member of our
certification team to Bruce McDannold, and we did submit
the application last night to the California Secretary of
State's Office, so -- while this report was generated
yesterday. After the fact, that report was submitted.

MS. LEAN: Bruce -- this is Jana.

Bruce is unavailable at this time, so I can't
confirm that he received everything that they need. I
know that they have to have a full application in order
for them to set up testing schedules. So I can't confirm
any of that at this point.

CHAIRPERSON PÉREZ: What's our expectation on
when Bruce will be available to -- is he expected in this
morning? Is he --

MS. LEAN: He's at the meeting this morning --
CHAIRPERSON PÉREZ: Oh.

MS. LEAN: -- in the legislature. They're actually holding a meeting on voting systems in California. And he might have to testify at the legislature this morning, so he was unable to make today's meeting.

CHAIRPERSON PÉREZ: Okay. Any more questions for either the representative from Sequoia or Sutter County, Mr. Kaufman?

VICE CHAIRPERSON KAUFMAN: No.

CHAIRPERSON PÉREZ: Mr. Bustamante?

Mr. Guardino?

BOARD MEMBER GUARDINO: No.

CHAIRPERSON PÉREZ: Mr. Finney?

BOARD MEMBER FINNEY: So if we approve the staff recommendation today, we're voting consistent with what we've done over -- consistently with what we've done over the past six meetings or so?

CHAIRPERSON PÉREZ: Yes, but. Much -- much like this is a certified system with a condition, my response is somewhat conditional as well. Yes, the action would technically be consistent because we've approved allocations in the past for acquiring this technology. The difference is this is the first time that the staff report raised specific issues about the ability for the
system to, in fact, be implemented in time for the June
primary. On all previous items regarding this technology
that have come before us -- and I ask staff to correct me
where I'm wrong -- my understanding is that the -- the --
the usability in a primary was at issue, but there was
never a flag to the fact that absent action by a date
specific it didn't look like it would be able to be
implemented.

We're now at a point where the staff report
raises serious questions about the ability to move
forward if -- if Sequoia doesn't apply by the end of this
month, which is, you know, the next 12 days. We're
hearing from Sequoia that they applied last night via
e-mail. So I guess the real question is was that -- was
it sufficiently responsive to the needs of the Secretary
of State's Office in the package that they put together.
And if not, then I think there is a pretty substantive
difference between what's before us and what's been
before us in the past.

BOARD MEMBER FINNEY: And in the absence of
approval, we'd be approving a system that could be used
legally in the general election.

CHAIRPERSON PÉREZ: Correct.

BOARD MEMBER FINNEY: And I'd like to ask Sutter,
what do you do in the case where you can only use it in
the general, you can't use it in the primary?

CHAIRPERSON PÉREZ: That was the answer you gave us before by using the optical.

BOARD MEMBER FINNEY: The optical.

CHAIRPERSON PÉREZ: Do you want to add more to that? If we can get you to -- we apologize.

Technical --

MS. BECHTEL: I have to tell you I sincerely hope that you will approve this because I have constantly alluded to both my board of supervisors and to the public -- and there's been great discussion about this -- is that the Sequoia system was certified but had two conditions on it. And any -- any indication or movement by your Board that this system is not certifiable, you know, really puts me in a very, very awkward position, and then I really don't know what I would do for the June primary election. I told you what my fallback position is in the event that this should not be used. And frankly, we're very anxious to meet all the requirements. I mean, we've stuck ourselves out on a limb knowing that -- in order that we can do that.

CHAIRPERSON PÉREZ: Let me ask you this question because one of the issues that's at issue is whether or not Sequoia has provided the Secretary of State's Office with the required information to evaluate its usability.
in the June primary, what would be the harm done if instead of voting up or down on this item today, if we put it off to our February meeting, which still allows you to move forward and would still, if everything is in place, allow you to meet your June 6th requirement, is my understanding? What would be the harm done if we put it off to February?

BOARD MEMBER FINNEY: If I could clarify real quick, the Chairman's -- for the other members -- the Chairman's alluding to the implementation plan, which has the next step taking place on March 15th of '06, which is the warehouse modifications completed. But I just want to quickly add it is a very aggressive and tight schedule from that point forward.

MS. BECHTEL: It is.

BOARD MEMBER FINNEY: Yeah. So, sorry.

MS. BECHTEL: It is. I'll tell you honestly, I think, just personally, I would be in a place in my own community -- because I have relied on the fact that Sequoia is certified with a condition. And I have been challenged on that because when they now go to the Secretary of State's website and it lists who is certified, Sequoia is shown as not being certified, and people are saying that I misrepresented, and I did not.

CHAIRPERSON PÉREZ: No, you absolutely --
MS. BECHTEL: I represented --

CHAIRPERSON PÉREZ: -- represented what was --
what's always been represented to us and what's always
been represented publicly, that is absolutely a certified
system. The only questions is -- is the condition with
respect to its use in a primary election.

MS. BECHTEL: And if you would, you know, delay
this, what I would go back and be facing is people
saying, "See? We told you so." And I want to do what's
right here, but also if you don't, then I can't move
forward on the primary election.

CHAIRPERSON PÉREZ: Let ask you a different
approach. With at least two other Counties we -- we
issued funding conditioned upon meeting certain
deadlines. And had those deadlines not been met, our
approval would have sunsetted. How would you view
something like that, which allowed us to take action
today but allowed us to have our approval sunset if
Sequoia, in fact, didn't meet the end-of-January deadline
that's alluded to here in terms of providing the
Secretary of State with all the information necessary?
That wouldn't -- that wouldn't preclude you from coming
back to us at a future date once they did supply the
information, but it would -- it would allow our approval
to be sunsetted.
BOARD MEMBER FINNEY: Yeah, approval with conditions subsequent.

CHAIRPERSON PÉREZ: Correct.

MS. BECHTEL: Well, let me ask you this: If I do not have your approval to move forward for funding with my board -- and my understanding and certainly my hope is that by the November election -- we're in a very short time frame --

CHAIRPERSON PÉREZ: Absolutely.

MS. BECHTEL: -- that is true. As a matter of fact, we have just as -- my board did approve last night signing a contract with Forefront to help us implement this, because we're a small county. We realize that there's a short time schedule.

I guess I'm saying to you I've done everything I believe on my part in good faith to make sure in representing to my County that we would get this funding and that -- and if you would delay it or sunset it, then I'm not sure how I can go forward to even purchase something for the November election. I mean, it's just sort of back to --

BOARD MEMBER FINNEY: How about this, Mr. Chairman: How about if we approve this with a condition that the County not use the DRE system for the primary if its -- if the system is not approved in time
for the primary, that you do rely on the optical for the
primary, but then it's approved for the general, which
it's perfectly, you know, approved -- I mean it's been
certified for.

CHAIRPERSON PÉREZ: But that's consistent with
what the County said from the outset, regardless of
whether or not we created any caveats, any conditions,
any modifications.

BOARD MEMBER FINNEY: Yeah, that's what I was
suggesting.

CHAIRPERSON PÉREZ: So it's only committing to
writing what the County had already offered to do as what
they thought would be the most prudent course of action.

BOARD MEMBER FINNEY: Committing to writing in
order to obtain the -- acquire the money from us.

CHAIRPERSON PÉREZ: I'm not positively
predisposed to that, but I'd like to hear from the
others.

Here's -- here's quite frankly my concern because
I absolutely empathize with where you're coming from,
because I think that you submitted a very thorough plan
and it shows the diligence and the work that you and your
staff went through in getting to this point today. So my
concerns are not in any way a reflection on the efforts
of your County. My concerns are a reflection and a
concern about where we are technologically and the fact
that, quite frankly, if Sequoia doesn't move forward in
this time line, there may be other systems that are
there, and I guess it speaks to my frustration about how
long it's taken for us to close this last gap.

So if I could get each of your senses of what we
should do here, Mr. Kaufman first, then Mr. Bustamante,
then Mr. Guardino. Because the next two Counties to come
before us are in a very similar situation as well.

So Mr. Kaufman?

VICE CHAIRPERSON KAUFMAN: Well, I guess I'm as
perplexed as everybody else. And I don't know if the
other Counties coming have the same type of time schedule
that you all have before you that Sutter has put forth.
Is that the case or no?

CHAIRPERSON PÉREZ: Well, if it would be helpful,
what we can do is basically move on to hear the staff
recommendations for Tulare and Yuba, allow the
representatives from Tulare and Yuba to speak as well,
and then figure out if the three Counties are similarly
situated or if there's any -- if there's any value in
looking at specific differences between them.

VICE CHAIRPERSON KAUFMAN: I think that would be
a good idea because I hate to -- I think we should be
dealing with everybody that's involved in the same
category as one.

CHAIRPERSON PÉREZ: Okay. Mr. Bustamante, are you comfortable with us moving forward on that same track?

BOARD MEMBER BUSTAMANTE: Well, but Tulare has a different system than the Sequoia system; correct? So how is there similarities?

MS. LEAN: No, they actually have the same.

CHAIRPERSON PÉREZ: Yeah, Tulare has the AVC --

BOARD MEMBER BUSTAMANTE: Oh, you're right, you're right, you're right.

CHAIRPERSON PÉREZ: -- Edge II DRE, 126 units.

BOARD MEMBER BUSTAMANTE: Yeah, yeah, I'm sorry. I saw the Optech Insight.

VICE CHAIRPERSON KAUFMAN: Yeah, they have a different optical scan system.

CHAIRPERSON PÉREZ: Right, but the same DRE.

BOARD MEMBER BUSTAMANTE: I have a -- I have a question actually of Sequoia.

CHAIRPERSON PÉREZ: Go ahead.

BOARD MEMBER BUSTAMANTE: Well, my question is, you know, there were media reports that talked about deadlines for state testing. In the same media reports, the Secretary of State said that he wanted testing done before the end of January. And Sequoia representatives
had indicated they wouldn't be doing theirs until
February. And the Secretary of State in the media
reports indicated that if it hadn't been completed by
January, that they wouldn't be certified by March, which
wouldn't allow them to be available for the primary. So
I'd like the Sequoia representative to kind of reconcile
her previous statements with the media reports.

MS. NOELL: First of all, let me state that I'm
not on the certification team. But as I understand it,
the indication from the Secretary of State's Office has
been that the application had to be received in January.

BOARD MEMBER BUSTAMANTE: I see. I'm just
reading from the media reports, and it just says that
according to the Secretary of State that U.S. makers of
voting machinery be finished with national testing and
ready for state testing by the end of January.

MS. NOELL: And again, let me again -- I keep
qualifying myself that I'm not on the certification team,
but as I understand it --

CHAIRPERSON PÉREZ: Well, do you have anybody
else from your company with you?

MS. NOELL: No.

CHAIRPERSON PÉREZ: Do you have anybody from your
testing team who could be here in the next hour?

MS. NOELL: No.
BOARD MEMBER BUSTAMANTE: Forgive me for a second, your name is Michelle; right?

MS. NOELL: No, this is Sheree Noell.

BOARD MEMBER BUSTAMANTE: Oh, Sheree, I'm sorry.

Okay.

MS. NOELL: Michelle is, in fact --

BOARD MEMBER BUSTAMANTE: Your spokesperson, Michelle Shafer, said that -- that apparently that you would be doing this sometime in February.

MS. NOELL: Correct.

BOARD MEMBER BUSTAMANTE: So I'm just kind of curious, how do you reconcile those two?

MS. NOELL: Well, the information that we have received is that the application has to be received in January and then the date for testing following that.

BOARD MEMBER BUSTAMANTE: So --

MS. NOELL: And that's the communication as I understand it between Sequoia and Mr. McDannold.

BOARD MEMBER BUSTAMANTE: So Jana, is there somebody from the Secretary of State's Office that can clarify what's been reported to the press versus what the Sequoia representative is saying?

MS. LEAN: Actually, I can. I can give you a little more information. There was a meeting yesterday in the office of Voting Systems Technology Assessment.
And in that meeting they did indicate to staff that the vendor informed us last week that they anticipate completing federal testing by the end of this month and they also anticipated submitting an application by the end of this month in order to move forward and get the certification for the June 2006 primary. And that was information that we had as of yesterday.

BOARD MEMBER BUSTAMANTE: My question is the Secretary of State was reported to have said that testing, state testing, needed to have been completed by the end of January, which I guess is inconsistent with Sequoia's plans, and so I'm just wondering what that does.

MS. LEAN: Actually, we did send a letter to some of the voting system vendors, and Sequoia was one of them. The Secretary did submit a letter and said that in order to have timely certification, they must have -- a complete package must be received by January 20th and that federal testing must be completed by January 31st of this year.

BOARD MEMBER BUSTAMANTE: What about the state testing?

MS. LEAN: State testing would be scheduled after that. That's why it's such a tight time frame.

CHAIRPERSON PÉREZ: So the key date there then
would be the January 20th date, which is the day after

tomorrow, and that's the complete package, which is in

question now, whether, in fact, what the Sequoia

representative asserts was sent last night has been

received and, if so, whether or not it was a complete

package, which would lend itself to evaluation.

BOARD MEMBER BUSTAMANTE: Got it.

MS. LEAN: I do apologize for not having a voting

system person here to address your questions but --

BOARD MEMBER BUSTAMANTE: No, I think that

clarifies it for me.

MS. LEAN: Okay.

CHAIRPERSON PÉREZ: Mr. Guardino?

BOARD MEMBER GUARDINO: No, I'm fine.

CHAIRPERSON PÉREZ: Mr. Finney?

BOARD MEMBER FINNEY: No questions.

CHAIRPERSON PÉREZ: Okay. Then what I'd like to

do is take a little bit of a break here from Sutter,

receive the staff report for Tulare and Yuba, and then

have the representatives of Tulare and Yuba come up and

talk to us as well, and then we can figure out how to

evaluate this together.

So if you would walk us through item five C,

Tulare County.

Let's just take a one quick second break.
MS. LEAN:  Sorry about that.
Okay. Tulare County. Their project
documentation is a little bit different than Sutter and
Yuba, but Tulare County submitted a project documentation
plan, and the staff is recommending a funding award that
is not their entire allocation. The funding award the
staff is recommending is $1,389,047.14. Tulare County
will be purchasing the Optech Insight precinct ballot
counters, 115 units, and also the AVC Edge II DRE, 126
units, with the VeriVote, 160 units. They also plan to
purchase the Optech 400-C ballot counters as their
absentee system, two units.

Tulare County's plan indicates an expectation to
begin receiving their new equipment in January of 2006
and delivery to be complete by the end of March 2006.
The actual delivery terms of the vendor contract are more
ambiguous, as was in the last staff report. The contract
language estimates delivery date at or about five months
from the date of the contract with a caveat on delivery
of two potentially different Optech Insight model
versions. The County plans to begin using this equipment
in the June 6, 2006 primary.

And the AVC Edge DRE units do have a printer, the
VeriVote printer, which is a VVPAT component.

Tulare County's project documentation meets all
the requirements for completeness. The Sequoia AVC units, Edge II DRE units with the VeriVote printers, the Optech Insight units, and the Optech 400-C units are certified for use in California.

The software used to run the AVC Edge units currently has a condition, as we've been talking about, on the certification for its use, as the software cannot be used in the primary election. The condition is expected to be resolved prior to the June 6th, 2006 primary. As we stated earlier, however, no application has yet been received by the Secretary of State's Office to accomplish that. And unless an application is brought forward by the vendor before the end of January, it appears unlikely that the Sequoia AVC Edge DRE units with the VeriVote printers would be certified for use during the June 6, 2006 primary.

Tulare County will be converting from the Diebold AccuVote optical scan. Tulare County believes that the deployment of one DRE unit and one optical scan unit in all of its polling places will bring the County into full compliance with the requirements of the Help America Vote Act. The DRE units will provide access to voters with disabilities and will also satisfy the second-chance voting requirements by not allowing overvotes and identifying undervotes.
Tulare County plans to conduct a rigorous public relations program to educate voters on both the new optical scan ballots and the DREs.

Tulare County's vendor contract contains a provision that allows for receipt of two different models of the Optech Insight optical scan voting equipment contingent upon the vendor gaining certification on its newest version of the Optech Insight with an LCD component.

The ambiguity of the delivery terms appears to be tied to this provision. It appears that if at the time of the delivery of the equipment the Optech Insight with the LCD component is certified for use in California, this equipment will be delivered to Tulare County. However, because Election Code section 19234(b) requires Voting Modernization funds to be expended only on certified voting systems, the currently certified Optech Insight optical scan equipment identified in Tulare County's project documentation plan without the LCD component is the only version of this equipment that the Voting Modernization Board may approve for reimbursement at this time.

The funding award must be based upon allowable reimbursement under Proposition 41 for the voting equipment hardware and software only. The installation,
training, outreach, and extended warranty costs listed in Tulare County's plan would not be covered as reimbursable claims under Proposition 41. These nonallowable expenses equate to approximately $475,000 of the County's overall voting system costs.

As the contract between Tulare and Sequoia Voting Systems is written at this time, Tulare County may not be eligible to receive their entire VMB-approved allocation amount taking into account the County's three to one match. Tulare County will only receive VMB payments once they have submitted invoices for their certified voting equipment.

It is our recommendation that Tulare County's project documentation plan be approved with the condition that this approval extends to equipment currently certified for use in California. If upon its certification Tulare County wishes to instead purchase Optech Insight with the LCD component, the County may submit an amendment to this application for consideration by the Board. Therefore we recommend a funding award be issued for allowable expenses only in amount of $1,389,047.14.

Any questions?

CHAIRPERSON PÉREZ: Any questions on the report, other than the questions that we already anticipate?
VICE CHAIRPERSON KAUFMAN: Well, actually, yes, I had a question. I was getting a little confused by the two options for the two different models.

CHAIRPERSON PÉREZ: With the LCD and without the LCD?

VICE CHAIRPERSON KAUFMAN: Yeah. I guess I'm reading the words, but I'm having a little trouble understanding what the -- what one will do that the other won't in the event that -- that the other system isn't certified.

MS. LEAN: That wasn't clear in the contract. I just -- I noticed that this was a provision of the contract, that they receive one or the other. We do have the voting system vendor here today. If they could provide some light on that, I would appreciate that.

VICE CHAIRPERSON KAUFMAN: Okay.

CHAIRPERSON PÉREZ: Okay. Let's wait for a second because I've got the same concern, Mr. Kaufman. Does it mean they'll get their choice of the two systems? Does it mean they'll get the vendor's choice of the two systems? Does it mean we'll ever actually find out what system they got and whether or not we funded the appropriate thing?

VICE CHAIRPERSON KAUFMAN: Right.

MS. NOELL: Sheree Noell with Sequoia Voting
Systems, again.

The options were such that we understood we, the -- Sequoia and the County, that they could not purchase a system that had not been certified, so -- excuse me -- there was an option in the contract -- there is an option in the contract that if the new Insight LCD is certified in time for the June primary, that that's the product that would be delivered. And it was part of the application that was submitted last night.

CHAIRPERSON PÉREZ: And what's the difference in the functionality of the new versus --

MS. NOELL: It's all a printout. It's the LCD printout on the front of the machine. The functionality doesn't change. It's just the way it is displayed that changes. But, of course, as we understand, any change needs, you know, certification. That's what it is. It is an LCD display on the front of the machine.

CHAIRPERSON PÉREZ: As opposed to?

MS. NOELL: As opposed to not an LCD. There's no display on the other one.

CHAIRPERSON PÉREZ: Okay.

VICE CHAIRPERSON KAUFMAN: So -- so we're actually talking about two different systems that are -- this is a system that's seeking certification as opposed to the -- the AVC Edge units which have a condition
attached to them?

CHAIRPERSON PÉREZ: That's right, Mr. Kaufman.

MS. NOELL: As I understood it --

VICE CHAIRPERSON KAUFMAN: This is a wholly separate issue with respect to the optical scan unit from the certification of the --

CHAIRPERSON PÉREZ: Correct. Correct. So we've got two -- we've got two variables here whereas in Sutter we had one variable. Here we have the variable of the software certification for the primaries, and then we have the variable of whether or not the new LCD optical scan machine is certified, and if so that would be what went to the County, which would then necessitate the County coming back to us, whereas if they weren't certified and went forward with a previously certified system, then the County would not necessarily need to come back before us.

VICE CHAIRPERSON KAUFMAN: Correct. And so none of the -- the whole issue about providing one or the other has nothing to do with the first issue, which is the certification of the -- the Edge units because that decision does not impact the optical scan system that's selected?

CHAIRPERSON PÉREZ: Correct.

MS. LEAN: That is correct. It's my
understanding from Bruce McDannold that Sequoia was going
to present this in one big package, that they would
present an application for the DRE AVC Edge with the --
taking the certification condition off and also with the
new optical scan precinct ballot counters are all part of
the whole application to move forward from federal
testing.

VICE CHAIRPERSON KAUFMAN: And it sounds like
what may have been done since she represented in
reference to the application from last night again.

Was that correct?

MS. NOELL: Yes.

CHAIRPERSON PÉREZ: Okay. Mr. Bustamante?

BOARD MEMBER BUSTAMANTE: No questions.

CHAIRPERSON PÉREZ: Mr. Guardino?

BOARD MEMBER GUARDINO: No.

CHAIRPERSON PÉREZ: Mr. Finney.

BOARD MEMBER FINNEY: Just to hear from the
County on this issue.

CHAIRPERSON PÉREZ: Very good. If we could have
a representative of Tulare come forward. And we're being
joined by Hiley Wallis from Tulare.

MS. WALLIS: Hiley Wallis, Tulare County
elections manager.

CHAIRPERSON PÉREZ: So, I mean you heard our
exchange with Sutter. And I guess given that exchange,
if there's anything you want to tell us first, and then
we'll open to the Board members to ask you any follow-up
questions.

But my questions were, you know, what if we put
off till February? What if we created a condition that
if we didn't receive the documentation by the end of this
month, that our approval sunsets? What if we split the
baby, in your case, between your optical scan and your
DRE?

MS. WALLIS: Okay. Well --

CHAIRPERSON PÉREZ: And what are you planning to
do -- what are you planning to do for your primary, I
guess. This is the most important question. What are
you planning to do for your primary if, in fact, the DRE
isn't approved for a primary?

MS. WALLIS: Well, you know, we're -- Tulare
County anticipates going paper based and that the DRE is
just a HAVA compliant machine that's going to be at each
polling site, so whether we deploy those or not is not
our main emphasis in the election or buying the new
equipment.

My concern with any kind of stipulation today
would be that you're -- No. 1, you're giving us
something -- in my understanding, you're telling us one
thing and you've already approved numerous other Sequoia counts to do something, and you're telling us we can't. So that doesn't seem equitable to me.

And secondly, you know, we do have a deadline. Every County has a deadline in elections. And we're just right up against it, and we've waited as long as we could to allow anybody, you know -- or to allow who we felt was our best choice to become compliant. And we -- we have every faith that they will. And so we need to move forward, and we would hope that you would too.

CHAIRPERSON PÉREZ: Okay. Let me take the first crack at this. I mean, we have $200 million. That's it. We have a one-time approval from the voters. And we were created as a board to act in the interest of the voters in figuring out how to distribute that money.

We went through a very exhaustive process that enabled us to come up with a funding allocation formula that initially allocated 1.75 million to your County. We did that understanding that these were very important questions and that the Counties would match us with one dollar for every three we put in. And so I, for one, take very seriously the protection of that public money in expending it.

And I think I stated earlier the difference between how I view where we're at at this moment versus
where we were previously is because the deadline has
gotten to a point where it's a more and more critical
consideration. And so my concern is that not putting
some sort of condition allows for the expenditure of
money that, in fact, may be expended in a way that's more
beneficial to the voters in this ever-changing world.

So I don't want to create unreasonable situations
for the Counties any more so than anybody else has, but I
also want to make sure that we hold these vendors
accountable for providing the equipment that they have
sold to you and basically convinced us all that they were
going to be able to deliver.

So you're more than welcome to respond to that.

If not, I'll open it up to the other Board members.

MS. WALLIS: Well, so do you anticipate going
back to the other Counties you've already approved? I
mean, what do you anticipate doing? There's only one
theoretical vendor that's totally certified at this
point, so what about -- what about all the ones that
you've already approved, whether it's Sequoia or ES&S --
or not ES&S, but Diebold or Hart? You know, everybody
else is on this list.

CHAIRPERSON PÉREZ: Right. That actually informs
my concern, because quite frankly we have expended money
and then the rules have changed, and some Counties have
actually purchased equipment that isn't going to be usable, and they're in the very difficult situation of being able to figure out whether they can come back to us again for money. And quite frankly, my concern is the County is spending their one dollar for the three that we put in on a system that at the end of the day may not serve their needs. And so that's what informs my thinking.

Mr. Kaufman?

VICE CHAIRPERSON KAUFMAN: Well, Mr. Chair, I think you've pretty well expressed this. I'm not sure I have anything to add.

CHAIRPERSON PÉREZ: Mr. Bustamante?

BOARD MEMBER BUSTAMANTE: I would say the same.

CHAIRPERSON PÉREZ: Mr. Guardino?

BOARD MEMBER GUARDINO: Likewise.

CHAIRPERSON PÉREZ: Mr. Finney?

BOARD MEMBER FINNEY: In some cases we also did put a condition, like a sunset-type of condition on our approval.

CHAIRPERSON PÉREZ: In at least two Counties.

BOARD MEMBER FINNEY: But what happened was, as the Chairman is stating, the rules changed. We were moving at a pretty clipped pace, and things dramatically shifted. And now the question becomes if ultimately, God
forbid, the system you've chosen doesn't get approved and
at some point in time you feel, you know, the County
desires to try to come back and get additional moneys, if
those moneys went into the -- were approved and expended
on the machines you couldn't ultimately use, there's
simply no money left to come back to get. That's the
risk that's being run by the Counties in this
circumstance.

Now, in this case, it's once again the same
machine, which means it's approved for the general. I
want to reemphasize that. This machine for both hardware
and software purposes can be used by all these Counties,
at least the three before us and the others that have it,
in the general election. And from a hardware
perspective, it's been approved. It seems to be one part
of the software or one aspect of the software as it
relates to -- we have to look at the legal side of it --
probably a regulation that's been promulgated by the --
by the agency that relates to how to address decline to
state voters and the reporting side of it.

And I can't speak to unfortunately whether that's
going to pass or not. We know the application is now in.
I imagine that there would be a fairly quick turnaround
on the part of Sequoia if the Secretary of State's Office
comes back and says it isn't quite enough information for
us. I mean, this is a real tricky one here.

CHAIRPERSON PÉREZ: Let me ask a question of
Hiley, because I understand your frustration, and I'm
sure you feel like you're being bounced around from
agency to agency between the federal standards, the state
standards, the certification process, and then us
ultimately allocating the money, and believe me, I
emphasize with that experience.

So I guess I'd come back to you with the first
question that I asked Sutter, if we put this off, if we
just defer consideration of this until the February
meeting so that the answer is there for us, what harm is
done to your County?

MS. WALLIS: Well, outside of we don't know --
well...

CHAIRPERSON PÉREZ: I'm happy to have Sequoia
answer the question --

MS. WALLIS: Okay.

CHAIRPERSON PÉREZ: -- from their perspective.

Well, if it was her perspective, she can address it.

MS. WALLIS: Well, it all -- it all boils down to
time. If you put my money off until February, which
starts the 113 days, the nomination period, where I
should be setting up my equipment and I have no equipment
to set up, you know, I don't -- I don't have -- it makes
that chance of getting to the June deadline even further. And since my main stay is the paper ballot, which I understand the optical scan section of this equipment is approved --

CHAIRPERSON PÉREZ: Given that your main stay is the paper ballot, what if we bifurcated your approval --

VICE CHAIRPERSON KAUFMAN: And what if we --

CHAIRPERSON PÉREZ: -- approved -- approved that portion of the money that's -- that's allocatable to your paper ballot system and put off your DRE consideration until February? So that allows you to move forward with the implementation that you need for your paper ballot system, and quite frankly allows you to do everything but pay for your DRE system. If, in fact, they act in a way consistent with the requirements of the Secretary of State, then it's just a matter of quick approval on February 15th. So if we bifurcate that, give you your money for your paper ballot system now, what's the harm that's done?

MS. WALLIS: Well, if --

BOARD MEMBER GUARDINO: Mr. Chairman?

BOARD MEMBER BUSTAMANTE: Yes, Mr. Guardino.

BOARD MEMBER GUARDINO: Mr. Chairman, this is Carl Guardino. With apologies, I have to step into another board meeting for a board on which I serve. The
direction that you are suggesting is well within my
comfort level.

CHAIRPERSON PÉREZ: Thank you, Mr. Guardino, and
thank you for joining us.

BOARD MEMBER GUARDINO: Thank you, sir.

CHAIRPERSON PÉREZ: And we still maintain our
quorum with four members present.

MS. WALLIS: Well, if you're going to give me one
or the other, I would prefer that you give me a sunset on
my -- on the contract so that we're not back here next
month if, in fact, everything does go through as I, you
know, pray to God it does. So, you know, that would not
take another one of my days and -- you know, because I am
generating very time sensitive.

CHAIRPERSON PÉREZ: I absolutely understand that.

MS. WALLIS: Okay. So if I have to choose, I'd
rather have a sunset than nothing.

CHAIRPERSON PÉREZ: Okay. Thank you.

Any other questions for Ms. Wallis from Tulare?

VICE CHAIRPERSON KAUFMAN: Just so I'm clear --

CHAIRPERSON PÉREZ: Mr. Kaufman.

VICE CHAIRPERSON KAUFMAN: -- Ms. Wallis would
rather have a -- you'd rather look at it from the sunset
perspective rather than bifurcate?

MS. WALLIS: Okay. If --
CHAIRPERSON PÉREZ: You're okay with bifurcation either way because bifurcation allows us to fund your entire paper ballot system now, and then the question becomes what we do with the other half. And you're comfortable with -- you're more comfortable, not comfortable. You're more comfortable with us creating a sunset for the DRE money as opposed to requiring you to come back in February for DRE money; am I correct?

MS. WALLIS: If -- yes. That means you're approving all of it based on future actions.

CHAIRPERSON PÉREZ: Correct.

VICE CHAIRPERSON KAUFMAN: Okay. But only --

MS. WALLIS: I'd rather have a sunset.

VICE CHAIRPERSON KAUFMAN: But only as to that second component.

CHAIRPERSON PÉREZ: Correct.

VICE CHAIRPERSON KAUFMAN: Okay.

CHAIRPERSON PÉREZ: Correct.

MS. NOELL: This is Sheree with Sequoia.

I do have something I'd like to point out, in that when you're referring to the February --

CHAIRPERSON PÉREZ: Now, is this your perspective or Tulare's perspective?

MS. NOELL: This is my perspective.

CHAIRPERSON PÉREZ: Okay.
MS. NOELL: The February date that you're referring to, as I understand it from the State's perspective regarding certification, Sequoia may begin its testing in February, but the State of California has a 55-day window by which they will certify. So by February 15th, the testing may well be done, but the State may not have given the proper paperwork.

CHAIRPERSON PÉREZ: That's not the issue I raised.

MS. NOELL: Okay.

CHAIRPERSON PÉREZ: What I raised was whether or not your company provided a complete package consistent with the letter from the Secretary on January 13th.

MS. NOELL: Okay.

CHAIRPERSON PÉREZ: So it's not a question of the action or the outcome of that process --

MS. NOELL: Just the action.

CHAIRPERSON PÉREZ: -- but the action from your side which you can be held responsible for with respect to the completeness of the package that is then available for review.

MS. NOELL: Understood. I just want to make sure that I'm on the same page.

CHAIRPERSON PÉREZ: Okay. Thank you very much, Ms. Wallis. If it meets with everybody's approval, I'd
like to hold off taking specific action on Tulare and now hear the staff report for Yuba County and then a representative from Yuba County come forward as well.

BOARD MEMBER FINNEY: Thank you.

CHAIRPERSON PÉREZ: Thank you very much.

We really aren't trying to create more road blocks, even though it feels that way.

Actually, can we take a two-or-three-minute break? Is that okay with everybody? Or do you want to just take over the chair for two or three minutes?

BOARD MEMBER FINNEY: I can do that.

CHAIRPERSON PÉREZ: Why don't you take over the chair for two or three minutes, Mr. Finney.

BOARD MEMBER FINNEY: All right.

CHAIRPERSON PÉREZ: Go ahead.

BOARD MEMBER FINNEY: Okay.

CHAIRPERSON PÉREZ: I've read your staff report, right.

BOARD MEMBER FINNEY: Okay. Actually, let's have the staff report. I'll sub in for Mr. Kaufman who's the formal vice chair only because I'm sitting here in person, I guess.

VICE CHAIRPERSON KAUFMAN: You have my authorization.

BOARD MEMBER FINNEY: Great.
VICE CHAIRPERSON KAUFMAN: You're in a much better position.

BOARD MEMBER BUSTAMANTE: Fine with me.

BOARD MEMBER FINNEY: Okay. Please proceed.

MS. LEAN: Yuba County's project documentation plan has been submitted. Staff recommends allocating a full allocation of $339,538. They are purchasing the Sequoia AVC Edge DRE units, 140 units, with the VeriVote printers, 157 units, and the Optech Insight ballot counters, two units.

And as we talked about before, the acquisition schedule, the actual delivery terms of the vendor contract are ambiguous. The contract language estimates delivery at or about four months from the date of the contract, and the County plans to begin using the equipment in the June 6, 2006 primary.

The AVC Edge DRE with the VeriVote, it does have a voter verified paper audit trail component.

Yuba County's project documentation plan meets the plan for completeness. The staff recommends requesting an additional acquisition schedule and project documentation time line to be provided once the County and the vendor have established actual delivery dates.

The Sequoia AVC Edge units with the VeriVote printers, the Optech Insight units and the Optech 400 --
let me see, I'm sorry -- and the Optech Insight units are certified for use in California. The software used to run the AVC Edge units, as we have talked about, currently have a conditional certification for its use as a software, cannot be used at a primary election. I will continue reading. The condition is expected to be resolved prior to the June 6, 2006 primary.

However, no application for this upgrade has yet been received by the Secretary of State's Office and unless the application is brought forward by the vendor before the end of January, it appears unlikely that the Sequoia AVC Edge DRE units with the VeriVote printers would be able to be certified for use during the June 6, 2006 primary.

Yuba County will be converting from the Datavote punch card system. Yuba County will use the Optech 400-C as their absentee system and will be implementing the AVC Edge DRE units as their precinct-based voting system in all of their polling places during the June 6, 2006 primary. Yuba County believes that the deployment of DRE units in all the polling places will bring the County into full compliance with the requirements of the Help America Vote Act as well as provide greater accessibility to voters who need special accommodations and voters who desire to vote in Spanish.
Yuba County plans to conduct -- or sorry, plans
to contract with an outside consultant to assist in the
development and implementation of a project plan to fully
implement the new voting system. The County is currently
developing a voter outreach and education program for the
new voting equipment. And Yuba County plans to require
all staff and coworkers to complete a hands-on training
to become familiar with the voting units.

Yuba County will only receive VMB payments once
they have submitted invoices for the purchase of the
voting equipment.

Please note that the staff-proposed funding award
is based upon allowable reimbursement under
Proposition 41 for voting equipment hardware and software
only. The installation, training and poll worker -- the
installation, training and poll worker training, the
voter outreach costs listed in Yuba County's plan would
not be covered as a reimbursable claim under
Proposition 41.

Staff recommends requesting that an additional
acquisition schedule and project time line be provided
once the County and the vendor have established actual
delivery dates.

It is our recommendation that Yuba County's
project documentation plan be approved and a funding
award letter be issued in the amount of $339,538.

Any questions?

CHAIRPERSON PÉREZ: I think what we'll do is go
directly to the representative from Yuba, unless somebody
has a burning question.

If you would identify yourself, please.

MS. HANSEN: My name is Terry Hansen. I'm the
county clerk/registrar of voters in Yuba, California.

CHAIRPERSON PÉREZ: Thank you for joining us.

And I'm sure you feel as frustrated as your other
colleagues in terms of where we're at at this point. If
you could maybe answer first the question of should we
not -- should the system not be approved in time to be
used in the June primary, what system would you use in
the June primary?

MS. HANSEN: Well, we're on Datavote. Currently
we're a Datavote punch card system, so we do not have the
option of continuing. That isn't an option. We have got
to change voting systems for the June primary. Our
consideration would be to use the optical scan, as
indicated by Sutter County, in the -- in the June
primary. We would use it in all our polling places.

CHAIRPERSON PÉREZ: And so you -- but you'd have
to do it centralized with the two?

MS. HANSEN: We would do a centralized count;
that is correct.

CHAIRPERSON PÉREZ: And that's a new system that you need to acquire at this point as well?

MS. HANSEN: That's correct. We are brand-new from beginning to end here because of our Datavote status.

CHAIRPERSON PÉREZ: If you could, maybe weigh in on, you know, I think you've heard probably more from me than you wanted to about the options as I see them, but if you would weigh in on how you view the issue of coming back before us or the issue of us doing conditional approval and having a sunset date or what harm is done to you if we do either of those two things.

MS. HANSEN: I guess what ideally I would like to see is that the funding be awarded, because I do agree that there's an equitability issue here. Other Counties -- and I do -- I do sympathize with your concerns, but I think we all need to be treated as much as we can on any equal playing field.

And so with that said, I would like to see the funding be approved today so that we can go forward. Obviously reimbursement is not made unless we purchase equipment that is certified, so we wouldn't be able to submit an invoice for payment unless the equipment had been certified.
CHAIRPERSON PÉREZ: Actually, let me ask a question on that. Because the hardware is certified for both primary and general but only the software is at issue with respect to the primary, is Ms. Hansen correct that she wouldn't be able to get reimbursement until that primary software certification issue is resolved, Mr. Kanotz?

MR. KANOTZ: This is Michael Kanotz speaking. My understanding is that the voting system is actually certified as an entire system so that although the issue is with the software in terms of a primary election, the conditional certification that the system has right now would have to be essentially reconsidered in this application process and certified without that condition for the system to be certified -- for the system to be usable during the primary. It's a little complicated because of the condition.

BOARD MEMBER FINNEY: So the primary then. So for purposes of the general, they could submit for reimbursement after the primary, if, once again God forbid, it wasn't approved prior?

MS. LEAN: Well, technically the hardware is certified.

BOARD MEMBER FINNEY: No, no, but he's saying that the system is approved and certified as a whole,
meaning that they could not seek reimbursement for the
system for the primary if it is not ultimately certified
in the next couple of months, but that one could argue
then they could submit for reimbursement of the system
going into the general.

CHAIRPERSON PÉREZ: Unless there's still an
unresolved question of certification for a primary in
2008.

VICE CHAIRPERSON KAUFMAN: Except that -- correct
me if I'm wrong. We had Counties that used this system
last fall in the special election, in fact, I think we
heard from one a couple months ago.

MS. LEAN: That's correct.

CHAIRPERSON PÉREZ: Have we reimbursed those
Counties?

MR. KANOTZ: No, it gets a little technical
because of the condition. But this system is a certified
system, and it could be reimbursed for today under the
provisions of the Voting Modernization Act.

CHAIRPERSON PÉREZ: So --

MR. KANOTZ: Whether it can be used in the
primary is a different question. And because of the
condition, it -- as of -- as it stands today, it could
not be used in the primary.

CHAIRPERSON PÉREZ: So getting back to the
statement that Ms. Wallis -- Ms. Hansen, I'm sorry, made about them not being able to draw down the money until the certification issue with respect to the primary software was resolved, that's not your understanding; in fact, they could draw down the money prior to that -- prior to that resolution? It's just the usability of the system that's at question?

MS. LEAN: I would agree with that assessment.

CHAIRPERSON PÉREZ: Okay. So you wouldn't have to -- there would be no further check for the money -- check not in the financial sense, check as in the checks and balances sense -- if we were to approve today.

So how do you -- understanding that your ideal is for us to approve the full amount consistent with the staff report now, how would you view, first of all, bifurcation so that we considered your paper ballot system separate from your DRE system? And second, if we go that way, would you prefer having to come back before us in February or having a sunset on the allocation for the DRE money?

MS. HANSEN: I would prefer leaving here today knowing that the funding is available to me to purchase my optical scan system. And as my compatriots before me have said, we need to move forward. Yuba County is in almost a desperate situation in that we cannot use our
system. We have no voting system.

CHAIRPERSON PÉREZ: Okay. Mr. Kaufman?

VICE CHAIRPERSON KAUFMAN: I guess I don't think I have any further questions for Ms. Hansen.

CHAIRPERSON PÉREZ: Mr. Bustamante?

BOARD MEMBER BUSTAMANTE: No, I think we've kind of exhausted this whole issue.

CHAIRPERSON PÉREZ: Okay. I've got a couple of questions for Sequoia. You're more than welcome to stay up here just in case another question comes up, but you're more than free to take your regular seat as well.

VICE CHAIRPERSON KAUFMAN: And Mr. Chair, I'll have a question later as well.

CHAIRPERSON PÉREZ: Okay. So Mr. Bustamante raised questions about both the federal process and the state process and raised questions that were informed by press reports about different interpretations of the time line, some expressed by representatives of your company, some expressed by the Secretary of State. So I have a follow-up question along those lines. Has Sequoia completed the federal testing process?

MS. NOELL: No. We are in the federal testing process. And again, I'm not here to speak on behalf of the certification team, but as I understand it from a sales perspective --
CHAIRPERSON PÉREZ: Right, but you're the one that's -- I don't want to get argumentative, but you've made certain statements which have compelled these three Counties to come forward and want to do business with you.

MS. NOELL: Correct.

CHAIRPERSON PÉREZ: And I feel at this point incredibly frustrated by inconsistent sets of information that I've received from your company and, quite frankly, feel very uncomfortable committing the allocation of state moneys based on these inconsistencies. My understanding is, and perhaps somebody on the staff could correct me, but federal qualification and having received a federal qualification number is a precondition for the state certification process. And therefore in order for a packet to have been complete that was sent from your company here, that it would require a federal qualification number. Do you disagree with that assessment?

MS. NOELL: Yes, I disagree. As I understand it, the State of California requires me to pass a certain milestone within the federal process. Once that particular milestone is passed or is achieved, then you can submit to the State of California and then become -- or begin somewhat of a simultaneous testing.
CHAIRPERSON PÉREZ: How is that milestone recorded?

MS. NOELL: That is something that is -- that's where I get into this gray area, that Bruce McDannold has had specific conversations our team, and they are working that out between them.

CHAIRPERSON PÉREZ: Would it helpful to you to take a five-minute break, talk to somebody on your team, and help explain to me, after you've spoken to them, what that milestone is and whether or not you've achieved it?

MS. NOELL: Yes. I could do that.

CHAIRPERSON PÉREZ: Then why don't we take a five-minute recess.

MS. NOELL: I want to make sure I understand the question. What is the milestone?

CHAIRPERSON PÉREZ: What's the milestone and how do we know you've achieved it and how do we know, in fact, you're at a point where you could have provided, as you've asserted, a complete package to the Secretary of State's Office for review, which is really fundamentally what's at issue.

So we'll take roughly a five-minute break --

MS. NOELL: Okay.

CHAIRPERSON PÉREZ: -- and reconvene at about 12:00 noon.
(Recess taken.)

CHAIRPERSON PÉREZ: Okay. We're back in session.

Go ahead. You wanted to --

MS. NOELL: Okay. Sheree with Sequoia again.

The question as I understand it from Chairman Pérez was what is the milestone and how does the State know that we've achieved it? Let me answer the second part first. I have no idea how the State knows. That's a State question, not a Sequoia question.

The milestone --

CHAIRPERSON PÉREZ: How do you report to the State?

MS. NOELL: Well, actually let me -- and I'll answer the first part, what is the milestone. As of the letter of January 13th and subsequent conversations, as I understand it, the invitation to submit is now absent of any milestones. So again, we go back and forth between what is the understanding and what is written. And I asked for some guidance a little bit on the lawyerly side because --

CHAIRPERSON PÉREZ: So your answer is there is no milestone.

MS. NOELL: As of now with that letter, there is no milestone.

BOARD MEMBER FINNEY: What does that mean?
CHAIRPERSON PÉREZ: There's no milestone. Okay.

There's no milestone.

MS. NOELL: The milestone was --

CHAIRPERSON PÉREZ: That's fine. There's no milestone. Thank you. I have no further questions for you.

As you can probably tell, I have reached my point of frustration. I would like to suggest that what we do -- sure, Jana.

MS. LEAN: I understand that the Counties might want to come up and give some additional comments at this time, if you would like to entertain that.

CHAIRPERSON PÉREZ: I'm always willing to hear from the Counties. And understanding that because we're going to lose two members, the more concise we are, the quicker we can resolve this hopefully in a way that's acceptable to the Counties.

BOARD MEMBER FINNEY: I've got three chairs here, ladies.

CHAIRPERSON PÉREZ: Like a barber shop, three chairs, no waiting.

MS. BECHTEL: Joan Bechtel, Sutter County.

There's just two comments additionally that I wanted to make, and I think I already made one, but I do want to clarify again. You know, I was accused last
night of -- at my board meeting by a member from the public, actually more than one, that I had misrepresented that Sequoia was certified. And I did not. I based that on what I have received from the Secretary of State's Office.

It made the front page of the paper today. I mean, I have to tell you this is -- this creates just an extremely awkward situation for me because we've also made our first payment, which was part of our contract. We've made our first payment to Sequoia. And for us to be treated differently than the other Counties already have been, it looks like there is a major problem and that I was somehow aware of it or wasn't -- didn't keep up with information that was provided, and that absolutely is not true. Because I have continually relied on the fact of certification based -- even in this report, that there was a condition, but that the system was certified.

Thank you.

CHAIRPERSON PÉREZ: And I want to just speak to that, because I think you and I work from the exact same set of assumptions and that you absolutely represented the system appropriately and thoughtfully to us and I'm sure to the County, that you had every reason to believe that this was a certified system. And quite frankly, it
still is. There's just a condition on the certification
with respect to its usability in a primary, and that's
what's of certain to me individually.

MS. HANSEN: Terry Hansen from Yuba County. I'd
like to agree with what Joan just said. We've already
made our first payment out of our county general funds on
our contract amount with Sequoia. And I'm very
concerned, as I mentioned to you earlier, that we're able
to go forward and have some system. And as was conveyed
to us when we went for our RFP, that was our part of RFP
process early on so we could be in the process in a
timely manner and that we would not have a system that
was not certified. At the time that we did our RFP,
Sequoia was the only certified system in the game. ES&S
was not certified at that time. So we tried to comply
with the time lines put before us at that time.

And I appreciate your frustration with this. My
biggest concern is that we're able to have an election in
June, and I know that's your biggest concern also.

CHAIRPERSON PÉREZ: Absolutely.

MS. HANSEN: And without some sort of funding
mechanism, Yuba County will not be able to have equipment
of any sort to go forward with our primary preparation.

MS. WALLIS: My name is Hiley Wallis with Tulare
County. I just want to -- I'm sitting up here in
support. I agree.

CHAIRPERSON PÉREZ: Thank you, all three. What we're going to do is we're going to consider each of them hopefully in a way that's consistent or that you'll appreciate our attempt at being consistent. As I make some recommendations or as board members offer their motions, you're more than welcome to speak again on the specific proposals.

So here is my sense, and I'd like to see people's comfort level with it. To the extent that any of these three Counties are looking for funding for nonDRE-based expenditures, I think we should -- we should immediately approve that amount of their funding award letter.

To the extent that the moneys in their applications are for the AVC Edge II DRE system, I -- my preference would be that we issue a funding award letter to pay for that portion of their acquisition as well, but that that portion have on it the following condition: That they have a complete application to the Secretary of State and that they have completed their federal testing by January 31st, 2006. That requirement is informed by the letter that the Secretary of State issued on January 13th that required their application to be complete by January 20th and that the federal testing be completed by January 31st.
I'm consolidating both of those with the same deadline date of the 31st to afford the company the furthest out date reasonable consistent with the staff report. So it would be to approve the funding that the Counties are seeking, but with that condition with respect to the amount of money allocated to the DREs.

And I would suggest that we create a sunset date for the DRE portion, either of the February or March meeting. That would still allow for the Counties to come back to us if they completed that process after our January 31st deadline but -- and wanted to move forward at that time.

So if I could have folks' sense of this concept, and then we can take a motion.

Mr. Kaufman?

VICE CHAIRPERSON KAUFMAN: I generally agree with you, Mr. Chair. I -- I absolutely think that we need to move ahead right now on any funding that doesn't involve this particular software.

I did have -- I did think that there was one distinction with Yuba, and maybe we should just talk about this, one concern I had that I actually meant to ask somebody about, and that was the fact that Yuba doesn't have any system right now. If the certification doesn't take place, Yuba doesn't even have a backup
system because they have to do away with the punch card
voting system.

CHAIRPERSON PÉREZ: And my understanding of the
presentation of Ms. Hansen -- and please correct me where
I'm inconsistent with your presentation -- is that Yuba's
fallback position, should the DRE not be approved for use
in the June primary, is that at the polling locations
they would use a system that's consistent with their
absentee ballot system that they're seeking funding for,
which is an optical scan HPX140 APX206, yada, yada, yada,
yada.

VICE CHAIRPERSON KAUFMAN: Right, but which they
would have to then purchase.

CHAIRPERSON PÉREZ: Right, but their
application --

VICE CHAIRPERSON KAUFMAN: Unless -- unless
Sequoia has any provisions, you know, in the contract for
making the County whole until such time as the system is
certified.

CHAIRPERSON PÉREZ: Right. But what their --
their approach was that they were going to acquire two of
these units as a central count for absentee ballots and
if the AVC Edge II DRE wasn't certified for use in the
primary, that they were then going to optical scan voting
in the polling locations, but do central count using the
same system that they were using for the absentees.

Am I correct, Ms. Hansen?

MS. HANSEN: Yes, that is correct.

CHAIRPERSON PÉREZ: That's -- that's Ms. Hansen's assertion as well.

VICE CHAIRPERSON KAUFMAN: Okay. Okay.

CHAIRPERSON PÉREZ: We actually do listen.

VICE CHAIRPERSON KAUFMAN: And then -- all right.

So, you know, that being the case, as long as we're not -- I would -- I would adopt your approach in bifurcating these and moving forward with a sunset date. I think that's a reasonable way to go at this point in time. It may not be completely in line with what we have done in the past, but, as you said, the goalposts keep shifting, and I think under the circumstances it's the best we can do. And, you know, I think it's to the Counties' benefits in many ways as well.

CHAIRPERSON PÉREZ: Right.

Mr. Bustamante?

BOARD MEMBER BUSTAMANTE: Yeah, I would -- I think what we have to do is probably have to wait until March, certainly, to be able to -- hold on, I'm sorry.

CHAIRPERSON PÉREZ: We lost Mr. Bustamante for a second.

How about you, Mr. Finney?
BOARD MEMBER FINNEY: Well, I just want to point out that I second Mr. Kaufman's concerns with respect to our past actions. There's two aspects that I want to address. One is that as the deadlines have gotten closer and closer, it's incumbent upon this Board to be less and less lax in its approach to trying to, you know, move forward with funding conditioned subsequent to approval of certification.

Also, once again, the Counties are running the risk if this Board does approve these systems and they don't work out of not being able to get funded from this proposition's pot of money going forward for systems that do work.

And so I just want to emphasize that the Board is not taking this decision lightly, and we do very much appreciate and respect the difficult circumstances in which you find yourselves.

I also am very supportive of moving forward with the systems that we know are completely certified and work out just fine. And I am also open to, once again, taking that leap of faith and proceeding with the funding of the DRE systems conditioned subsequent, meaning with some type of a sunset provision, and hopefully everything works out. But the Board has to be very, very careful on how it proceeds, more so as we approach these -- the
deadlines we're running into for certification purposes.

And finally I want to state that I think it would probably be fine with the Board, if my fellow Board members would approve, if we issued some type of a statement that could be used by the registrars. I'm certainly sympathetic to the political circumstance that some of you have found yourselves in. And I think that if we did a statement clarifying the circumstances, I think that would be helpful to get it off of you and put your public onto us. Not that I like that kind of thing. I've been there too many times in the past.

But I think it would be helpful if we did something like that. You have a condition -- approval conditioned subsequent, straight approval for the systems that do work, approvals conditioned subsequent for those systems that are still questionable, and then a letter explaining the circumstances so that it clarifies for the purposes of elected boards and members of the public in your respective Counties why we've made the decision we've made.

MS. BECHTEL: Could you put that out immediately?

BOARD MEMBER FINNEY: Yeah, we'd put that together immediately.

CHAIRPERSON PÉREZ: Yeah, we could do that.

If you'd identify yourself again. I know you're
with Tulare County.

MR. McDONALD: Vern McDonald, assistant auditor/controller.

You mentioned the January 31st deadline, putting it in there. I have a problem with that, is -- is that I think that's out of everybody's control in this room. It's with the federals. And if that makes everything go away and we have to reapply, that's going to put a big burden on us. I'd like to be able to say if you sunset -- if the process is going well at the State and at that time has a federal certification, we're okay. But just to say the January 31st date and if it drops, we're out of the loop --

BOARD MEMBER FINNEY: So you're suggesting a --

CHAIRPERSON PÉREZ: I understand what you're saying.

BOARD MEMBER FINNEY: You're talking about a condition rather a time certain.

MR. McDONALD: Right.

CHAIRPERSON PÉREZ: Okay. I understand where you're coming from. I'm not sure I'm a hundred-percent there yet, but let me think through how we structure this because I don't want to create an artificial barrier there.

BOARD MEMBER FINNEY: But we also have to be --
CHAIRPERSON PÉREZ: But also -- okay.

Mr. Bustamante, are you back with us?

BOARD MEMBER BUSTAMANTE: Yeah. Sorry about that.

CHAIRPERSON PÉREZ: No problem. We just moved on for a few seconds while --

BOARD MEMBER BUSTAMANTE: No, no, I was with you, I just had to hit mute because I've got an allergy and I didn't want you to have to listen to it.

CHAIRPERSON PÉREZ: Are you saying that Los Angeles doesn't agree with you?

BOARD MEMBER BUSTAMANTE: I would say that wholeheartedly.

Anyway, I like your approach, Mr. Chairman. I would suggest that we, for the second part of this, allow for our March meeting, because I don't think -- based on what I'm hearing from Sequoia, it doesn't sound like they're going to -- it sounds like they're going to be doing this stuff in February as opposed to the end of January deadline, so just in case so we don't find ourselves in the same situation again we do that part of it in March.

And I would also agree with Mr. Finney that I think a letter is appropriate, because having sat on this Board from its -- when it was formed, you know, we've
gone up and down and all around in terms of frustration
on the part of vendors and have been with the Counties a
hundred percent. And the initial -- our initial charge
here was to find a way to help modernize voting equipment
for Counties so that voters would have the ability to
vote with confidence. And unfortunately we've had one
problem after another. And so I think a letter
explaining would be appropriate, would certainly be
helpful, I'm sure, to the registrars.

CHAIRPERSON PÉREZ: Okay. Let's take a
one-second pause here. I'm just trying to check the
March meeting date.

BOARD MEMBER FINNEY: Why don't we have
Mr. Kaufman take a crack at the motion.

CHAIRPERSON PÉREZ: Or --

VICE CHAIRPERSON KAUFMAN: Oh, great.

CHAIRPERSON PÉREZ: I'm more than willing to
entertain a motion, if you'd rather, Mr. Kaufman.

VICE CHAIRPERSON KAUFMAN: Yeah, why don't you
try and articulate it. And then I -- go ahead.

CHAIRPERSON PÉREZ: Before we do, Jana had
something else to add.

MS. LEAN: I was just going to make a comment
that we did approve for several Counties in the last few
months to purchase the same system, but as you have
indicated, that the --

BOARD MEMBER FINNEY: There was a condition.

MS. LEAN: If there's addition -- there's different circumstances that you've indicated than we were in now than we were back in November and in June, because we did approve Del Norte in November and Glenn in June and Kings in November. And they were actually reimbursed for that AVC Edge equipment. And San Benito was also awarded, but they have not received funding yet, but they are all purchasing the exact same equipment that these three Counties are in today. I just want to make a note that they are correct. This system has been approved and we have issued funding for the DRE units.

CHAIRPERSON PÉREZ: And I would like to say along those lines that when we considered those, there was great debate and a good degree of consternation from amongst the Board whether it was appropriate for us to approve at that point. And at that point there was a commitment that these -- or an expression to us, anyway, that these items would be resolved prior to the end of last year. And that date kept getting moved further and further.

And while I am always willing to be reasonable with respect to extending deadlines, there comes a point in time where we hit a wall, and I've hit that wall.
So here's -- let me ask a couple of questions. With respect to Sutter County, there is an amount of money that's allocatable to the AVC and there's an amount money that's allocatable to the optical Optech; correct?

MS. LEAN: Correct.

CHAIRPERSON PÉREZ: Okay. So the Chair would entertain a motion to approve the staff recommendation and issue a funding award letter in the amount of $497,078.20 and that the availability of these moneys is to be bifurcated in the following way: That the amount of money associated with the Optech system be immediately made available to the Counties and that the amount of money associated with the AVC Edge II DRE system components that have a condition on their use be awarded to the Counties but that no funds be transmitted to the Counties for reimbursement on this specific equipment set unless AVC or Sequoia Systems complies with the spirit of the letter of the Secretary of State issued January 13th, 2006, and supplies the State with a completed package for evaluation by January 31st, 2006.

What I'm doing is removing the condition of the federal approval because of the complicated interrelations between the federal approval process and the state approval process and based on statements that have been made to me that you can go through elements of
them concurrently. And I don't want to create a barrier
that nobody in the state has any control of.

    Should AVC -- should Sequoia fail to meet that
deadline, then our approval for funding for the
conditionally-approved equipment sunsets on March 10th,
2006, and could be brought back to us at our March 15th,
2006 meeting or any subsequent meeting at the request of
the individual Counties.

    That's my -- that's the motion I'd like to
entertain. Would somebody like to make that motion?

    VICE CHAIRPERSON KAUFMAN: I'll make the motion.
I just want to be clear. I think you kind of -- you
started out with Sutter and then mentioned Counties
plural.

    CHAIRPERSON PÉREZ: You're right. I was trying
to make a general motion, but, yes, that was specific to
Sutter. And I'd like to use this as a template for the
next two Counties. But you're absolutely right.

    VICE CHAIRPERSON KAUFMAN: I don't think we have
to repeat that whole second part for the next two
Counties.

    So with respect to Sutter County and the amount
stated, I will so move.

    CHAIRPERSON PÉREZ: Okay. Mr. Kaufman moves. Is
there a second?
BOARD MEMBER BUSTAMANTE: I'll second it.

CHAIRPERSON PÉREZ: Mr. Bustamante seconds.

Would Joan Bechtel like to add anything to this before we take action?

A separate item, we will talk about the letter after we vote on all three of these.

MS. BECHTEL: I just want to make sure that I'm understanding this, that you would approve funding for everything other than the DRE voting machines.

CHAIRPERSON PÉREZ: Here's the intent of the motion. We approve funding for everything, but we don't release the money for the DRE machine itself until Sequoia submits an appropriate complete package for evaluation to the State.

BOARD MEMBER FINNEY: He has removed the condition relating to certification.

CHAIRPERSON PÉREZ: Right. Assuming they did that last night as they assert, then we're done. But if for some reason the package they assert that they submitted last night is not complete, they have an opportunity to complete that package. If that isn't done, our approval of this money sunsets March 10th, and then you'd have to come back to us March 15th or thereafter.

VICE CHAIRPERSON KAUFMAN: Based on -- I think
based on the way it was framed, they would have to
complete that package if it is incomplete --

CHAIRPERSON PÉREZ: By January 31st.

VICE CHAIRPERSON KAUFMAN: -- in the next couple
weeks.

CHAIRPERSON PÉREZ: Yeah.

MS. BECHTEL: Thank you.

BOARD MEMBER FINNEY: And then another point
before we vote on this. I would like to say for the
record that I see the spirit of the Board's motion that
we are attempting to help the Counties not only move
forward with a, you know, consistent reliable efficient
election system, but that we are also trying to move
forward with the tenor of the proposition that gave birth
to this effort, and finally, that we are doing all that
we can to help the Counties comply with HAVA.

But having said that, we are cognizant of the
fact that there still remains one aspect of these DRE
systems, just one aspect of it, in the primary itself
that relates to the software with respect to -- Sequoia
is correct about this -- just the decline to state voters
and their reporting thereof that remains uncertified and
that the Board's, you know, taking a risk here, yet
again, to try to do all we can to help meet what the
voters decided when they passed this proposition.
MS. BECHTEL: I guess the one thing that keeps
going on in my mind, and maybe you can clarify for me, it
was my understanding that Sequoia was certified except
for, as you mentioned, the decline to state portion. I
did not ever realize until just recently that that was
going to require a submission of a complete new package.
I thought it was a condition that could be lifted by
Sequoia resolving that particular issue. And so that's
what really changed enormously for me, was an
understanding of that.

BOARD MEMBER FINNEY: Unfortunately, that's a
different board than ours.

CHAIRPERSON PÉREZ: Right. And quite frankly,
though, you've been working from a different set of
assumptions than I have. Because as we approved this
system in other Counties, we specifically talked about
the fact that it was conditionally approved, that the
system as it had been approved had deficiencies in its
software with respect to primary elections. And while
the underlying concern is with respect to decline to
state voters, that's not how it technically read. The
way it technically read was its usability in primary
elections.

BOARD MEMBER FINNEY: Right. Usability. That
specific information came to us from Sequoia.
CHAIRPERSON PÉREZ: And quite frankly, two
dynamics are very important for us to realize. One is
that in California the vast majority of legislative
decisions, whether they're state or federal, are made in
primary elections; and two, that we're at a point in time
historically where the fastest growing subset of voters
is decline to state voters. So we take seriously
whatever requirements are placed in, either by regulation
or by law, to make sure that the greatest level of voter
confidence is there in a system in its entirety. And
reporting is one of those key elements of voter
confidence.

MS. BECHTEL: I clearly understand. It was just
a misunderstanding that I had. And I have to honestly
say that I feel that it was reinforced to me by the
vendor. And I'm also going to publicly say that I am
really disappointed that the vendor does not have someone
here that can address the issues that we've raised. I
mean, this has left myself and the other registrars that
are here trying to move forward and trying to meet all
the requirements, you know, standing here not really,
really having a total answer, even though I know you're
trying to address that. But I wish there was a
requirement that they had to have someone here, the
vendor did, who could answer your questions. Because
we're really leaving this meeting with you making a
decision and me having to live by it without really have
full answers.

I thank you for trying to address it.

CHAIRPERSON PÉREZ: Thank you.

Anybody else before we take a vote on this?

Okay. Then if you would -- if you would call the
roll on the motion made by Mr. Kaufman, seconded by
Mr. Finney.

BOARD MEMBER FINNEY: Mr. Bustamante.

CHAIRPERSON PÉREZ: Mr. Bustamante, I apologize.

MS. MONTGOMERY: John Pérez.

CHAIRPERSON PÉREZ: Aye.

MS. MONTGOMERY: Stephen Kaufman.

VICE CHAIRPERSON KAUFMAN: Aye.

MS. MONTGOMERY: Michael Bustamante.

BOARD MEMBER BUSTAMANTE: Aye.

MS. MONTGOMERY: Tal Finney.

BOARD MEMBER FINNEY: Aye.

CHAIRPERSON PÉREZ: Very good. We have approval.

VICE CHAIRPERSON KAUFMAN: Mr. Chair, hang on.

I'm trying to get my votes in here, but I'm already about
20 minutes late for a meeting.

CHAIRPERSON PÉREZ: Okay. So the Chair would
entertain a motion consistent with the motion for Sutter
County, and if you would just enter in the same type of
language for us, and approve the staff recommendation in
the amount of $1,389,047.14 with all the same caveats
that were in the Sutter County motion.

Mr. Kaufman, do you so move?

VICE CHAIRPERSON KAUFMAN: I will so move again.

CHAIRPERSON PÉREZ: Mr. Bustamante, do you so
second?

BOARD MEMBER BUSTAMANTE: I so.

BOARD MEMBER FINNEY: Before we vote on it,
Mr. Chair, one last quick statement on this. I also
wanted to point out with respect to the previous motion
that passed and this one and the next coming one, that,
once again, even though we've approved the money, if in
the end the system is not approved or certified for the
primary, it cannot be used.

CHAIRPERSON PÉREZ: Correct.

BOARD MEMBER FINNEY: Right.

CHAIRPERSON PÉREZ: Until they come to us.

BOARD MEMBER FINNEY: Until they come back to us
and it is certified.

MS. BECHTEL: Are you talking about the whole
system or --

BOARD MEMBER FINNEY: No.

CHAIRPERSON PÉREZ: No, no, no, just the DRE.
BOARD MEMBER FINNEY: We're all just acknowledging the law separate from the decision that we're making here today. I want to make sure that the public feels that this Board -- has confidence in the decision that this Board has made, which in a way is a risk for us. We're expending significant public funds here, and I experience the same frustration with respect to the vendor. You know, we're all taking a risk here, really.

VICE CHAIRPERSON KAUFMAN: And I guess I'd just like to reiterate that any -- the action that we're taking and the conditions we're putting on it are not directed at the Counties themselves, but at the vendor and should not be taken any other way other than us desiring that this issue get resolved once and for all so the Counties can move forward.

BOARD MEMBER FINNEY: And that the action we're taking, once again, does not encourage the Counties to use these machines in violation of the law if they are not approved in time for the June primary.

CHAIRPERSON PÉREZ: Right. Very good.

BOARD MEMBER FINNEY: Even though we're expending the money.

CHAIRPERSON PÉREZ: On the question.

MS. MONTGOMERY: John Pérez.
CHAIRPERSON PÉREZ: Aye.

MS. MONTGOMERY: Stephen Kaufman.

VICE CHAIRPERSON KAUFMAN: Aye.

MS. MONTGOMERY: Michael Bustamante.

BOARD MEMBER BUSTAMANTE: Aye.

MS. MONTGOMERY: Tal Finney.

BOARD MEMBER FINNEY: Aye.

CHAIRPERSON PÉREZ: We have approval.

Next, Yuba County. Same motion.

VICE CHAIRPERSON KAUFMAN: I will make the same motion.

CHAIRPERSON PÉREZ: In the amount of $339,538 even.

VICE CHAIRPERSON KAUFMAN: Right. I will so move.

BOARD MEMBER BUSTAMANTE: And I'll second again.

CHAIRPERSON PÉREZ: Anybody be heard?

Hearing none, if you'd call the roll.

MS. MONTGOMERY: John Pérez.

CHAIRPERSON PÉREZ: Aye.

MS. MONTGOMERY: Stephen Kaufman.

VICE CHAIRPERSON KAUFMAN: Aye.

MS. MONTGOMERY: Michael Bustamante.

BOARD MEMBER BUSTAMANTE: Aye.

MS. MONTGOMERY: Tal Finney.
BOARD MEMBER FINNEY: Aye.

CHAIRPERSON PÉREZ: Okay. Next item before us is other business.

Hearing none, we'll move on to the final item before us, which is adjournment. I will assume before we go to adjournment that you will empower the Chair to issue a letter to these three Counties consistent with the discussion that we had earlier today.

VICE CHAIRPERSON KAUFMAN: I will do that. And if you all want to further discuss this, I'm going to have to sign off.

CHAIRPERSON PÉREZ: As long as you defer to the Chair, we're fine.

BOARD MEMBER FINNEY: The Chair's going to write a letter consistent --

VICE CHAIRPERSON KAUFMAN: I defer to the Chair.

BOARD MEMBER FINNEY: We'll defer to the Chair on that.

VICE CHAIRPERSON KAUFMAN: I'm fine with that.

CHAIRPERSON PÉREZ: Okay. Is there a motion to adjourn?

BOARD MEMBER FINNEY: To be issued right away.

MS. BECHTEL: Can you just --

VICE CHAIRPERSON KAUFMAN: So move.

MS. BECHTEL: -- for my benefit make it
absolutely clear that when I said it was certified --

CHAIRPERSON PÉREZ: It was certified.

MS. BECHTEL: -- it was certified?

BOARD MEMBER FINNEY: Yes.

CHAIRPERSON PÉREZ: Okay. Moved -- it's been moved and seconded? Mr. Kaufman moved.

Mr. Bustamante, second --

BOARD MEMBER BUSTAMANTE: Yes.

CHAIRPERSON PÉREZ: -- to adjourn?

All in favor, signify by saying "aye."

MULTIPLE SPEAKERS: Aye.

CHAIRPERSON PÉREZ: We are adjourned.

(The meeting concluded at 12:37 p.m.)
CERTIFICATE OF REPORTER

I, YVONNE K. FENNER, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing Secretary of State's Voting Modernization Board meeting was reported in shorthand by me, Yvonne K. Fenner, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of January, 2006.

YVONNE K. FENNER, CSR, RPR
Certified Shorthand Reporter
License No. 10909